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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 517.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY and TEXARKANA AND FORT SMITH RAILWAY COMPANY,

Appellants,

v.

THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Appellees.

APPEAL FROM UNITED STATES DISTRICT COURT FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

JURISDICTIONAL STATEMENT FOR APPELLANTS UNDER RULE 12.

FRANK H. MOORE,
CYRUS CRANE,
Solicitors for Appellants.

SAMUEL W. MOORE,
Of Counsel.

October 24, 1930.

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Appellants,

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Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

JURISDICTIONAL STATEMENT FOR APPELLANTS UNDER RULE 12.

The appellants, in support of the jurisdiction of this Court to review the above-entitled cause on appeal, respectfully represent:

A. The Statutory Provisions Sustaining Jurisdiction.

Section 238 of the Judicial Code, as amended by the Act of February 13, 1925, Ch. 229, 43 Stat. 936, 938 (28 U. S. C. A. 345), provides as follows:

> A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following Acts or parts of Acts, and not otherwise:
>
> (4) So much of "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year 1913, and for other purposes," approved October 22, 1913, as relates to the review of interlocutory and final judgments and decrees in suits to enforce, suspend, or set aside orders of the Interstate Commerce Commission other than for the payment of money.

The Urgent Deficiencies Appropriation Act of October 22, 1913, Ch. 32, 38 Stat. 208, 219-220 (28 U. S. C. A. sec. 41 (28), 47 and 47a), confers jurisdiction upon the district court of suits brought to enjoin, set aside, annul, or suspend "in whole or in part any order of the Interstate Commerce Commission," and, with respect to review by the Supreme Court of decrees entered in such suits, provides as follows:

> A final judgment or decree of the district court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases.

B. Date of Decree, and Date of Application for Appeal.

The final decree sought to be reviewed was entered on September 19, 1930 (R. 44).* The application for appeal

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* References are made to pages of the certified unprinted record prepared by the clerk of the District Court and on file with the clerk of this Court, as the record has not yet been printed.

was presented to the lower court on September 19, 1930 (R. 45). An order allowing the appeal was entered on the same day (R. 50). The cause was docketed in this Court on October 18, 1930.

C. Nature of the Case and Rulings Below.

The appellants were plaintiffs below and will be referred to herein as "the plaintiffs". They brought this suit in the lower court, under the Urgent Deficiencies Appropriation Act, to enjoin, set aside, annul and suspend, in part only, two orders of the Interstate Commerce Commission made on November 4, 1929, and July 30, 1929, respectively (Exhibits A and B to plaintiffs' petition (R. 3)), requiring the plaintiffs and other carriers "to cease and desist . . . from the transportation or movement of private passenger train cars, including so-called office cars, of another carrier free or at other than published tariff rates", and amending the Commission's pass regulations accordingly. The plaintiffs sought to set aside the said orders only in so far as they prohibit the movement of an office car of another carrier, upon such terms as the interested parties may mutually agree upon, when such office car is occupied exclusively by officers and employees of the company owning the car, traveling upon business in connection with the operation of their own railroad. When the words "office car" are used herein, they mean an office car so occupied and used. Plaintiffs did not seek to modify or disturb the order in any other respect.

The plaintiffs charged in their petition (R. 3) that neither they nor any of the other carriers of the country have ever held themselves out, by published tariffs or otherwise, as common carriers of office cars, and that they

had never handled office cars in the capacity of common carriers; that plaintiffs and other carriers own valuable office cars which for many years have been in daily use upon their own lines, and in occasional use upon foreign lines; that such office cars, so used, are necessary facilities in the operation of their railroads and in the transaction of their usual and customary business; that such office cars, when moved over the line of another carrier, are moved in each individual instance upon the special request of the company desiring the movement, which request such foreign line is at liberty to grant or refuse, and does grant or refuse, in its discretion; that the use of such office cars on foreign lines is not a matter in which the public is interested, or in which a public service is involved; that such movements of office cars are made by such foreign lines in their capacity as private carriers, and not in their capacity as common carriers, and, for that reason, the Commission is vested with no power or authority to regulate their movements or the terms on which such movements are made; that the interested companies have the constitutional right to use such office cars on foreign, as well as home lines, and full liberty to contract with such foreign lines with respect to the terms of such movements; and that this right to make lawful use of their property, and to enter into lawful contracts in reference thereto, can not be abrogated by the Commission, as it has sought by its orders to do.

It is also alleged that the movement of such office cars over foreign lines did not discrimnate against any member of the traveling public, and that there was no evidence before the Commission to justify its finding that such discrimination existed.

It was further alleged that the provisions of the Interstate Commerce Act relating to free transportation, and

the administrative rulings made by the Commission in reference thereto, together with the subsequent action and non-action of Congress in reference thereto, duly authorized and legalized the free movement of office cars over foreign lines.

The evidence before the lower court (R. 60) consisted of a certified transcript of all the evidence before the Commission, on which its orders were based, which both parties agree is typical of plaintiffs and other carriers, and which they agree is correctly summarized in the Commission's report in 155 I. C. C. 775; and also the testimony of the plaintiffs' president, who made a detailed statement of the practice in the movement of office cars over foreign and home lines, as such practice had existed for many years prior to the Commission's order herein; and also testified to the purpose and necessity of the daily use of such office cars on home lines, and to the purpose and necessity for their occasional use on foreign lines, in properly conducting the ordinary and usual business and operations of the carriers. The facts were practically undisputed. The controversy was over the legal conclusions to be drawn therefrom.

The lower court denied each and all of the said claims of the plaintiffs, and dismissed their petition (R. 44). Its opinion (R. 76) gives its reasons for its action. Errors were assigned by appellants (R. 47), with respect to the lower court's denial of each claim.

D. Cases Believed to Sustain the Jurisdiction of This Appeal.

The statute quoted above grants an appeal to this Court as a matter of right in cases of this nature.

Numerous decisions of this Court sustain its jurisdiction:

Chicago Junction Case, 264 U. S. 258;
St. Louis & O'Fallon R. Co. v. *United States*, 279 U. S. 461, 482;
Baltimore & Ohio R. Co. v. *United States*, 279 U. S. 784;
Akron, C. & Y. R. Co. v. *United States*, 261 U. S. 184, 189.

We respectfully submit that this Court has jurisdiction of this appeal.

Respectfully submitted,

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CYRUS CRANE,
Solicitors for Appellants.

SAMUEL W. MOORE,
Of Counsel.

October 24, 1930.